

CHAPTER 23 PROCUREMENT BY COMPETITIVE SEALED PROPOSALS

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2300 USE COMPETITIVE SEALED PROPOSALS

2300.1 All contracts which do not require the use of competitive sealed bids under §2200.1 or 2200.2 of Chapter 22 of this title shall be awarded by using competitive sealed proposals, except contracts that are awarded in compliance with the sole source or emergency procurement provisions of Chapter 24, and contracts which qualify for use of small purchase procedures under the provisions of Chapter 25.

2300.2 [Deleted] 40 DCR 6963 (October 1, 1993).

AUTHORITY: Unless otherwise noted, the authority for this chapter is §4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, D.C. Law 3-172, D.C. Code §2-2501 *et seq.* (1994 Repl. Vol.).

SOURCE: Final Rulemaking published at 36 DCR 6681, 6740 (September 22, 1989); as amended by Final Rulemaking published at 40 DCR 6963 (October 1, 1993).

2301 SOLICITATION OF PROPOSALS

- 2301.1 The contracting officer shall use a request for proposals ("RFP") to communicate the Agency's requirements to prospective contractors when the competitive sealed proposals ("CSP") method is used. Each RFP shall conform to the uniform contract format specified in §2201 of Chapter 22 of this title.
- 2301.2 The contracting officer shall issue a written solicitation which contains all information necessary to enable prospective offerors to prepare proposals properly.
- 2301.3 The contracting officer shall furnish identical information about a proposed procurement to all prospective offerors receiving the RFP.
- 2301.4 Agency personnel shall not provide advance knowledge or information about a future solicitation to any prospective offeror.
- 2301.5 Except for solicitations for information or planning purposes, the contracting officer shall not solicit proposals unless there is a definite intention to award a contract.
- 2301.6 The contracting officer shall establish, maintain, and use lists of potential sources.
- 2301.7 Before issuing a solicitation, the contracting officer shall develop an estimate of the reasonable price level or value of the supplies or services to be purchased.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6740 (September 22, 1989).

2302 PRESOLICITATION NOTICES AND CONFERENCES

- 2302.1 Presolicitation notices and conferences may be used as preliminary steps in procurements by competitive sealed proposals in order to accomplish any of the following:
- (a) Develop or identify interested prospective offerors;
 - (b) Request preliminary information based on a general description of the supplies or services involved;
 - (c) Explain complicated specifications and requirements to interested prospective offerors; or
 - (d) Aid prospective offerors in later submitting proposals without undue expenditure of effort, time, and money.
- 2302.2 If presolicitation notices are used, the contracting officer shall prepare and issue each notice to prospective offerors and shall publicize the notice in a newspaper of general circulation and any trade publication deemed appropriate by the Director of Procurement.

- 2302.3 A presolicitation notice shall include the following:
- (a) A description of the information to be furnished in the response;
 - (b) An indication whether the notice will be followed by a conference and a formal solicitation; and
 - (c) A request that parties interested in the contemplated procurement respond by a specified date.
- 2302.4 In complex procurements, the presolicitation notice may request information pertaining to management, engineering, and production capabilities.
- 2302.5 The contracting officer shall furnish copies of the solicitation to all those responding affirmatively to the presolicitation notice and to other prospective offerors upon request.
- 2302.6 A presolicitation conference may be used only when approved by the contracting officer.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6741 (September 22, 1989).

2303 SOLICITATIONS FOR INFORMATION AND PLANNING PURPOSES

- 2303.1 When information necessary for planning purposes cannot be obtained from prospective offerors by more economical and less formal means, the contracting officer may determine in writing that a solicitation for information and planning purposes is justified. If this determination is approved by the Director of Procurement, the contracting officer shall then issue the solicitation.
- 2303.2 A contracting officer shall not use a formal RFP as a solicitation for information or planning purposes.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6741 (September 22, 1989).

2304 PUBLIC NOTICE OF REQUESTS FOR PROPOSALS

- 2304.1 The contracting officer shall provide for adequate public notice of the request for proposals to be given at a sufficient time before the date set forth in the notice for the opening of proposals. In no event shall the notice required in this subsection be less than thirty (30) calendar days.
- 2304.2 The notice required under §2304.1 shall include publication in at least one (1) of, or a combination of, the following:
- (a) A newspaper of general circulation;
 - (b) A trade publication considered appropriate by the Director of Procurement; or

(c) *The District of Columbia Procurement Digest.*

2304.3 The Director of Procurement shall submit notice of each Request for Proposal ("RFP") to the Department of Administrative Services for inclusion on the D.C. Procurement Hotline.

2304.4 When a solicitation mailing list is available for the particular requirement, requests for proposals or notices of the availability of RFP's shall be mailed or otherwise furnished to a sufficient number of potential offerors for the purpose of securing competition.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6742 (September 22, 1989).

2305 PRE-PROPOSAL CONFERENCES

2305.1 The contracting officer may hold a pre-proposal conference to brief prospective offerors after a solicitation has been issued but before offers are submitted.

2305.2 The contracting officer or designated representative shall do the following:

- (a) Conduct the pre-proposal conference;
- (b) Furnish all prospective offerors identical information concerning the proposed procurement;
- (c) Make a complete record of the conference; and
- (d) Promptly furnish a copy of that record to all prospective offerors that request a copy in writing.

2305.3 The contracting officer shall inform all pre-proposal conference attendees of the following:

- (a) That remarks and explanations at the conference do not qualify or amend the terms of the solicitation; and
- (b) That the terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6742 (September 22, 1989).

2306 AMENDMENT OF SOLICITATIONS BEFORE CLOSING DATE

2306.1 After issuance of a solicitation, but before the date set for receipt of proposals, the contracting officer may make changes in the solicitation to reflect the following:

- (a) Significant changes in quantity, specifications, or delivery schedules;
- (b) Correction of defects or ambiguities;

- (c) Any change in the closing date for receipt of proposals; or
- (d) Any other appropriate purpose affecting the procurement.

2306.2 The contracting officer shall determine if the closing date needs to be changed when amending a solicitation.

2306.3 If the time available before closing is insufficient, the contracting officer shall notify prospective offerors by telegram or telephone of the extension of the closing date and shall, by written amendment to the RFP, confirm the extension of the closing date.

2306.4 The contracting officer shall not award a contract unless all of the amendments made to the RFP have been issued in sufficient time to be considered by prospective offerors.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6743 (September 22, 1989).

2307 RECEIPT AND SAFEGUARDING OF PROPOSALS

2307.1 All proposals and modifications received before the time set for the opening of proposals shall be kept secure.

2307.2 Except as provided in §2307.6, all proposals shall remain unopened in a locked box or safe. Necessary precautions shall be taken to ensure the security of the locked box or safe.

2307.3 If an RFP is cancelled, proposals shall be returned to the offerors.

2307.4 Before opening the proposals, information concerning the identity and number of proposals received shall be made available only to Agency employees, and then only as required in the execution of their duties.

2307.5 Each proposal shall be marked with the date and time of receipt.

2307.6 Envelopes marked as proposals which do not identify the offeror or the solicitation may be opened solely for purposes of identification or to determine whether an offeror is eligible to submit a proposal and then only by an Agency official designated for this purpose.

2307.7 A person who opens a sealed proposal by mistake, or for the reasons set forth in §2307.6, shall sign the envelope opened, indicate the person's position, and deliver it to the contracting officer. The contracting officer shall immediately write the following on the envelope and then sign and reseal the envelope:

- (a) An explanation of the opening;
- (b) The date and time opened; and
- (c) The RFP number.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6743 (September 22, 1989).

2308 LATE PROPOSALS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

- 2308.1 Offerors shall submit proposals, and any modifications, so that they will reach the Agency office designated in the solicitation on time.
- 2308.2 Unless the RFP states a specific time, the deadline for receipt of proposals shall be 2:00 p.m., local time, at the designated Agency office on the date that proposals are due.
- 2308.3 Proposals and modifications to proposals that are received in the designated Agency office after the exact time specified in the RFP or under §2308.2 are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:
- (a) The proposal or modification was sent by registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of proposals;
 - (b) The proposal or modification of proposal was sent by mail and it is determined by the contracting officer that the late receipt at the location specified in the RFP was caused by mishandling by the Agency after receipt; or
 - (c) The proposal is the only proposal received.
- 2308.4 The only acceptable evidence to establish the date of a late proposal, late modification, or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, modification, or withdrawal shall be deemed to have been mailed late. If the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown in the postmark, the proposal shall be considered late unless the offeror can furnish evidence from postal authorities of timely mailing.
- 2308.5 Any request for withdrawal or request for modification received after the time and date set for submission of proposals at the place designate for submission of proposals shall be considered "late."
- 2308.6 A late proposal, late request for modification, or late request for withdrawal shall not be considered, except as provided in this section.
- 2308.7 A late modification of a successful proposal which makes its terms more favorable to the Agency shall be considered at any time it is received and may be accepted.
- 2308.8 A late proposal, late modification of proposal, or late withdrawal of proposal that is not considered shall be held unopened, unless opened for purposes of

identification, until after award. The proposal shall then be retained with unsuccessful proposals.

2308.9 The following information shall, if available, be included in the contract office files with respect to each late proposal, late modification of proposal, or late withdrawal of proposal:

- (a) A statement of the date and hour of mailing, filing, or delivery;
- (b) A statement of the date and hour of receipt;
- (c) A written determination, with supporting facts, why the late proposal or modification was or was not considered for award;
- (d) A statement of the disposition of the late action; and
- (e) The envelope, or other covering, if the late proposal or modification was considered for award.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6744 (September 22, 1989).

2309 NOTICE TO OFFERORS OF LATE ACTIONS

2309.1 If a proposal, or modification or withdrawal of proposal, is received late, and it is clear from available information that it cannot be considered, the contracting officer shall promptly notify the offeror.

2309.2 If a late proposal, or late modification or withdrawal of proposal, is transmitted by registered or certified mail and is received before award, but it is not clear from available information whether it can be considered, the offeror shall be promptly notified.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6745 (September 22, 1989).

2310 DISCLOSURE AND USE OF INFORMATION BEFORE AWARD

2310.1 During the pre-award period of a procurement by competitive sealed proposals, only the contracting officer and others specifically authorized by the Director or the contracting officer may transmit technical or other information, or conduct any discussions with prospective contractors.

2310.2 After receipt of proposals, the information contained in them and the number or identity of offerors shall not be made available to the public or to anyone at the Agency not required to have access to the information in the performance of his or her duties.

2310.3 No employee or agent of the Agency shall furnish information to a prospective contractor if, alone or together with other information, it might give the prospective contractor an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.

- 2310.4 In order to ensure that solicited proposals (whether bearing a restrictive notice or not) are properly handled, the following notice shall be placed on the cover sheet of each proposal upon receipt:

NOTICE FOR HANDLING PROPOSALS

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this notice shall be applied to any reproduction or abstract of this proposal. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with. Disclosure of this proposal outside the Agency for evaluation purposes shall be made only to the extent authorized by, and in accordance with, the procedures established under the procurement rules of the Agency.

- 2310.5 A contracting officer may release proposals outside the Agency for evaluation, consistent with the following requirements:

- (a) A written agreement shall be obtained from the outside evaluator that the information contained in the proposal will be used only for evaluation purposes and will not be further disclosed; and
- (b) Any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor or by the Agency shall be affixed to any reproduction or abstracted information made by the evaluator.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6745 (September 22, 1989).

2311 [RESERVED]

2312 UNSOLICITED PROPOSALS

- 2312.1 Unsolicited proposals may be considered by the Director in order to obtain innovative or unique methods or approaches to accomplishing the mission of the Agency from sources outside the Agency.

- 2312.2 In order to be considered valid, an unsolicited proposal shall meet the following criteria:

- (a) It must be innovative and unique;
- (b) It must have been independently originated and developed by the offeror;
- (c) It must have been prepared without advice or supervision by any member of the Board or employee of the Agency;

- (d) It must include sufficient detail to permit a determination that Agency support would be worthwhile; and
- (e) It must show that the proposed work could benefit the mission of the Agency.

2312.3 Unsolicited proposals shall contain the following information to permit consideration in an objective and timely manner:

- (a) The offeror's name and address and type of organization, such as profit, non-profit, educational, or certified minority business;
- (b) The names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
- (c) The identity of proprietary data to be used only for evaluation purposes;
- (d) The signature of a person authorized to represent and obligate contractually the offeror;
- (e) The proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
- (f) The period of time for which the proposal is valid;
- (g) The type of contract preferred; and
- (h) The proposed duration of effort.

2312.4 The favorable evaluation of an unsolicited proposal shall not, by itself, justify award of a contract without competition. If the Agency decides to obtain the goods or services that have been offered in an unsolicited proposal, the contracting officer shall do the following:

- (a) Issue an RFP for the goods or services offered in the proposal, in accordance with this chapter, and evaluate all proposals received in response to the RFP along with the unsolicited proposal; or
- (b) Obtain from the Executive Director approval of a determination and findings for awarding the contract on a sole source basis.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6746 (September 22, 1989).

2313 EVALUATION OF UNSOLICITED PROPOSALS

2313.1 When performing an evaluation of an unsolicited proposal, the following factors shall be considered, in addition to any others appropriate for the particular proposal:

- (a) The unique and innovative methods, approaches, or concepts demonstrated by the proposal;
- (b) The overall scientific, technical, or socio-economic merits of the proposal;
- (c) The potential contribution of the effort to the specific mission of the Agency;
- (d) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives; and
- (e) The qualifications, capabilities, and experience of the proposed team leader or key personnel who are critical to achieving the proposal objective.

2313.2 The Agency shall return an unsolicited proposal to an offeror, citing reasons, when its substance meets any of the following criteria:

- (a) It is available to the Agency without restriction from another source;
- (b) It closely resembles a pending competitive requirement; or
- (c) It does not demonstrate any innovative or unique method, approach, or concept.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6748 (September 22, 1989).

2314 [RESERVED]

2315 SELECTION OF A CONTRACTOR

2315.1 The selection procedures set forth in this chapter shall be designed to accomplish the following:

- (a) Maximize competition;
- (b) Minimize the complexity of the solicitation, evaluation, and the selection decision;
- (c) Ensure impartial and comprehensive evaluation of offerors' proposals; and
- (d) Ensure selection of the offeror whose proposal has the highest degree of realism and whose performance is expected to best meet stated Agency requirements.

- 2315.2 Selection of a contractor through the use of the competitive sealed proposal ("CSP") process shall be based on competition involving an evaluation and comparison of cost or price and other factors among proposals that meet the Agency's minimum requirements as stated in the solicitation.
- 2315.3 The contracting officer shall be responsible for selection of a contractor from among the qualified offerors.
- 2315.4 The contracting officer shall be responsible for contractual actions related to the selection process, including, but not limited to, the following:
- (a) Issuing solicitations in accordance with the provisions of this chapter;
 - (b) Conducting or controlling all negotiations concerning cost or price, technical requirements, and other terms and conditions; and
 - (c) Selecting the contractor for contract award.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6748 (September 22, 1989).

2316 NEGOTIATION AFTER CANCELLATION OF INVITATION FOR BIDS

- 2316.1 If the Director of Procurement (the "Director") has determined that an invitation for bids ("IFB") issued under Chapter 22 will be cancelled and that use of negotiation is appropriate to complete the procurement, the contracting officer may award a contract after using negotiation procedures without issuing a new solicitation if all of the following conditions are met:
- (a) The contracting officer gives notice to each responsible bidder that submitted a bid in response to the IFB of the intention to use negotiation procedures and gives each interested responsible bidder a reasonable opportunity to negotiate;
 - (b) The negotiated price is the lowest price offered in response to the negotiation process by any responsible bidder; and
 - (c) The negotiated price is lower than the lowest rejected price bid by a responsible bidder in response to the original IFB.
- 2316.2 If an IFB has been cancelled in accordance with §2230.4(f) or 2230.4(g) of Chapter 22, and the Director has authorized completion of the procurement through negotiation, the contracting officer shall proceed with the procurement in accordance with the provisions of this chapter, or the sole source provisions of Chapter 24 of this title, if applicable.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6749 (September 22, 1989).

2317 CHANGES IN AGENCY REQUIREMENTS

- 2317.1 When, either before or after receipt of proposals, the Agency increases, decreases, or otherwise changes its requirements, the contracting officer shall issue a written amendment to the RFP, in accordance with §2306.
- 2317.2 In deciding which firms to notify of a change, the contracting officer shall consider the state in the procurement cycle at which the change occurs and the magnitude of the change, as follows:
- (a) If proposals are not yet due, the amendment shall be sent to all firms that have received a solicitation;
 - (b) If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment shall be sent only to the responding offerors; and
 - (c) If the competitive range has been established, the amendment shall be sent only to those offerors within the competitive range.
- 2317.3 If a change is so substantial that it warrants complete revision of a solicitation, the contracting officer shall cancel the original RFP and issue a new RFP, regardless of the state of the procurement. The new RFP shall be issued to all firms originally solicited and to any firms added to the original list. The new RFP shall be advertised in accordance with the requirements of this title.
- 2317.4 If the proposal considered to be most advantageous to the Agency (as determined by using the established evaluation criteria) involves a departure from the stated requirements, the contracting officer shall give all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements, if this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6750 (September 22, 1989).

2318 DISCLOSURE OF MISTAKES BEFORE AWARD

- 2318.1 The contracting officer shall examine all proposals before award for minor informalities or irregularities and apparent clerical mistakes.
- 2318.2 Communication with offerors to resolve apparent minor mistakes or irregularities shall be only for clarification, not discussion. However, if the resulting communication prejudices the interest of other offerors, the officer shall not award the contract without discussions with all offerors within the competitive range.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6750 (September 22, 1989).

2319 [RESERVED]**2320 PROPOSAL EVALUATION FACTORS**

- 2320.1 The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the selection of a contractor.
- 2320.2 The contracting officer shall include in the solicitation the evaluation factors, including price or cost and any significant subfactors. The solicitation shall include the minimum requirements that apply to each evaluation factor and significant subfactor.
- 2320.3 The contracting officer may include in the solicitation the numerical weights which may be used in the evaluation of the proposals.
- 2320.4 Evaluation factors shall be stated in descending order of importance.
- 2320.5 Price or cost to the Agency shall be included as an evaluation factor in each RFP.
- 2320.6 While the lowest price or lowest total cost to the Agency may be an important or even a deciding factor in many contractor selections, the contracting officer may select the contractor whose proposal offers the greatest value to the Agency in terms of technical merit and other factors, even though the proposal selected does not offer the lowest price or cost, if it is in the best interests of the Agency.
- 2320.7 When awarding a cost-reimbursement contract, the cost proposal shall not be controlling. The contracting officer shall consider which offeror can perform the contract in a manner most advantageous to the Agency, as determined by evaluation of proposals according to the established evaluation criteria.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6751 (September 22, 1989).

2321 EVALUATION OF PROPOSALS

- 2321.1 The contracting officer shall evaluate each proposal in accordance with the evaluation criteria in the solicitation.
- 2321.2 The contracting officer shall evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract.
- 2321.3 The contracting officer shall document the cost or price evaluation.

- 2321.4 If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the contracting officer shall forward the proposals to the appropriate Agency official for technical evaluation.
- 2321.5 If a technical evaluation is done, a technical evaluation report shall be prepared by the Agency official making or supervising the evaluation. The report shall contain the following:
- (a) The basis for evaluation;
 - (b) An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
 - (c) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and
 - (d) A summary of findings.
- 2321.6 A contracting officer may reject all proposals received in response to a solicitation by a written determination which concludes that to do so would be in the best interests of the Agency. The contracting officer's determination shall be approved by the Director.
- 2321.7 The reasons given for rejection may include, but are not limited to, the following:
- (a) None of the proposals meet the requirements of the Agency;
 - (b) None of the proposals is acceptable for technical or other reasons;
 - (c) All otherwise acceptable proposals received are at unreasonable prices; or
 - (d) The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
- 2321.8 When all proposals are rejected and no award will be made as a result of the RFP, the contracting officer shall cancel the RFP.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6751 (September 22, 1989).

2322 COMPETITIVE RANGE AND PRE-NEGOTIATION OBJECTIVES

- 2322.1 The competitive range shall be determined on the basis of cost or price and other factors, in accordance with the evaluation criteria that were stated in the solicitation, and shall include all proposals that have a reasonable chance of being selected for award.
- 2322.2 If there is doubt as to whether a proposal is in the competitive range, that proposal shall be included.

- 2322.3 The contracting officer shall notify, in writing, an unsuccessful offeror at the earliest practicable time that the offeror's proposal is no longer being considered for award.
- 2322.4 The contracting officer shall establish pre-negotiation objectives before the negotiation of any contract or modification in excess of one hundred thousand dollars (\$100,000). When cost analysis is required under §2326, the contracting officer shall address the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.
- 2322.5 The contracting officer shall develop pre-negotiation objectives to judge the overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee.
- 2322.6 In determining the pre-negotiation objectives, the contracting officer shall analyze the offeror's proposal and consider technical analysis and other pertinent data, such as Agency cost estimates and price histories.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6752 (September 22, 1989).

2323 DISCUSSIONS WITH OFFERORS

- 2323.1 The contracting officer shall conduct written or oral discussions with all offerors in the competitive range, except in the following circumstances:
- (a) If prices are fixed by law or regulation; or
 - (b) If it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the Agency at a fair and reasonable price.
- 2323.2 If discussions are held with offerors, the contracting officer shall determine which proposals are in the competitive range, and shall conduct written or oral discussions with the offerors who submitted those proposals.
- 2323.3 Among other areas of discussion, the contracting officer may enter into price negotiations with an offeror with the intent of agreeing on a fair and reasonable price.
- 2323.4 The contracting officer shall not be required to reach agreement on every element of cost, and may make reasonable compromises if necessary and if compromise is in the best interests of the Agency.
- 2323.5 If discussions are not held pursuant to §2323.1(b), the following requirements shall be met:
- (a) All offerors must have been notified of the possibility that an award might be made without discussion; and

- (b) The award must be made without any written or oral discussion with any offeror.

2323.6 The contracting officer shall ensure that, if discussions are held with any offeror within the competitive range, discussions are held with all offerors in the competitive range. The number and length of discussions held with each offeror may vary, depending on the need for clarification, the amount of progress made toward a satisfactory final proposal, and other factors affecting the need for discussion as determined by the contracting officer.

2323.7 During discussion with offerors, the contracting officer shall do the following:

- (a) Control all discussions;
- (b) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the requirements of the Agency;
- (c) Attempt to resolve any uncertainties concerning the technical aspects of the proposal and other terms and conditions of the proposal;
- (d) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing any information concerning other proposals submitted by other offerors or the evaluation process; and
- (e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions.

2323.8 The contracting officer shall not assist an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal. The contracting officer shall not disclose technical information pertaining to any proposal that results in the improvement of a competing proposal.

2323.9 The contracting officer shall not indicate to an offeror a cost or price it must meet to obtain further consideration, advise an offeror of its standing relative to another offeror, or otherwise furnish information about any other offeror's prices or terms.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6753 (September 22, 1989).

2324 BEST AND FINAL OFFERS

2324.1 If a contract is for one hundred thousand dollars (\$100,000) or less; and if, after completion of discussions with all offerors in the competitive range, the contracting officer determines that the award of the contract to one (1) of the offerors is clearly in the best interests of the Agency, based on the discussions held and the proposals, the contracting officer may award the contract Without requesting best and final offers.

- 2324.2 Except as provided in §2324.1, after completion of all discussions, the contracting officer shall issue to all offerors within the competitive range a request for best and final offers.
- 2324.3 The request for best and final offers shall include the following:
- (a) Notice that discussions are concluded;
 - (b) Notice that this is the opportunity to submit a best and final offer;
 - (c) A cut-off date and time that allows a reasonable opportunity for submission of written best and final offers; and
 - (d) Notice that if any modification of the best and final offer is submitted, it must be received by the date and time specified under §2324.3(c) and is subject to the provisions of this chapter covering late proposals.
- 2324.4 After receipt of best and final offers, the contracting officer shall not reopen discussions unless it is clearly in the best interests of the Agency to do so.
- 2324.5 Reasons for reopening discussions may include, but are not limited to, the fact that it is clear that information available at the time is inadequate to reasonably justify contractor selection and award based on the best and final offers received.
- 2324.6 If discussions are reopened, the contracting officer shall issue an additional request for best and final offers to all offerors within the competitive range.
- 2324.7 After evaluation of the best and final offers, the contracting officer shall select the offeror whose best and final offer is most advantageous to the Agency, considering price and other factors that were included in the solicitation.
- 2324.8 The contracting officer shall prepare supporting documentation for the selection decision that shows the relative differences among the proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. The supporting documentation shall include the basis for the selection of the contractor.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6755 (September 22, 1989).

2325 COST AND PRICING DATA

- 2325.1 The contracting officer shall require a prime contractor to submit and certify cost or pricing data for any contract awarded through competitive sealed proposals, sole source procedures, or any change order or contract modification.
- 2325.2 The contracting officer shall require that each contractor certify that, to the best of the contractor's knowledge, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date.
- 2325.3 When cost or pricing data are required, the contracting officer shall include a contract clause, approved by the Director, which provides that the price,

including profit or fee, will be adjusted to exclude any significant price increases occurring because the contractor's cost or price information, as of the specified date, was inaccurate, incomplete, or not current.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6756 (September 22, 1989).

2326 PRICE AND COST ANALYSIS

2326.1 The contracting officer shall be responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price.

2326.2 One (1) or more of the following techniques may be used to perform price analysis:

- (a) Comparison of proposed prices received in response to the solicitation;
- (b) Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar items;
- (c) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;
- (d) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements; and
- (e) Comparison of proposed price-s with independent Agency cost estimates.

2326.3 The contracting officer shall be required to perform a cost analysis in either of the following circumstances:

- (a) The award of any contract in excess of one hundred thousand dollars (\$100,000); or
- (b) The modification of any contract when the modification exceeds one hundred thousand dollars (\$100,000).

2326.4 If cost analysis is required, the contracting officer shall perform cost analysis by using the techniques and procedures set forth in this section.

2326.5 The contracting officer shall verify cost or pricing data and evaluate the cost elements, including the following:

- (a) The necessity for and reasonableness of the proposed cost, including allowances for contingencies;
- (b) A projection of the offeror's cost trends on the basis of current and historical cost or pricing data;
- (c) A technical appraisal of the estimated labor, material, tooling and facilities requirements and of the reasonableness of scrap and spoilage factors; and

- (d) The application of audited or negotiated indirect cost rates, labor rates, and other factors.
- 2326.6 The contracting officer shall evaluate the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future.
- 2326.7 The contracting officer shall compare the costs proposed by the offeror for individual cost elements with the following:
- (a) Actual costs previously incurred by the same offeror;
 - (b) Previous cost estimates from the offeror or from other offerors for the same or similar items;
 - (c) Other cost estimates received in response to the Agency request;
 - (d) Independent Agency cost estimates; and
 - (e) Forecasts or planned expenditures.
- 2326.8 The contracting officer shall verify that the offeror's cost submissions are in accordance with the contract cost principles and procedures set forth in Chapter 33 of Title 27, Contracts and Procurements (hereafter "Title 27 DCMR").
- 2326.9 The contracting officer shall review each proposal to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have been submitted or identified in writing by the contractor.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6756 (September 22, 1989).

2327 PRICE NEGOTIATION MEMORANDUM

- 2327.1 At the conclusion of each price negotiation, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiations.
- 2327.2 The price negotiation memorandum shall be included in the contract file and shall contain at least the following information:
- (a) The purpose of the negotiation;
 - (b) A description of the procurement, including appropriate identifying numbers;
 - (c) The name, position, and organization of each person representing the contractor and the Agency in the negotiations;
 - (d) If certified cost or pricing data were required, the extent to which the contracting officer did the following:

- (1) Relied on the cost or pricing data submitted and used them in negotiating the price; and
- (2) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated.
- (e) The most significant facts or considerations controlling the establishment of the pre-negotiation price objective and the negotiated price including an explanation of any significant differences between the two (2) positions; and
- (f) The basis for determining the pre-negotiation profit or fee objective, and the profit or fee negotiated.

2327.3 When price negotiation is based on cost analysis, the contracting officer shall analyze profit or fee.

2327.4 The contracting officer shall use the Agency's pre-negotiation cost objective amounts as the basis for calculating the profit or fee amount used as a pre-negotiation objective.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6758 (September 22, 1989).

2328-2329 [RESERVED]

2330 NOTIFICATIONS, PROTESTS, AND MISTAKES

2330.1 The contracting officer shall notify each offeror whose proposal is determined to be unacceptable before award unless disclosure might prejudice the best interests of the agency.

2330.2 If the proposal evaluation period for an RFP is expected to exceed thirty (30) days, or when a limited number of offerors have been selected as being within the competitive range, the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror.

2330.3 The contracting officer shall award a contract with reasonable promptness to the successful offeror by transmitting written notice of the award to that offeror.

2330.4 Promptly after the award of each contract, the contracting officer shall notify unsuccessful offerors in writing, unless pre-award notice was given.

2330.5 If a contract is awarded on a basis other than price alone, the contracting officer shall provide a debriefing for any unsuccessful offeror that submits a written

request for debriefing, unless the director determines that to do so is not in the best interests of the agency.

2330.6 If a debriefing is held, debriefing information shall include the agency's evaluation of the significant weak or deficient factors in the proposal. However, point-by-point comparisons with other offerors' proposals shall not be made.

2330.7 Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6759 (September 22, 1989).

2399 DEFINITIONS

2399.1 The definitions of terms and phrases set forth in §2099 of Chapter 20 shall apply to this chapter.

